

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION**

|                                   |   |                           |
|-----------------------------------|---|---------------------------|
| Peggy S. Kandies,                 | ) | Case No. 2:22-cv-4521-RMG |
|                                   | ) |                           |
|                                   | ) |                           |
| Plaintiff,                        | ) | <b>ORDER</b>              |
|                                   | ) |                           |
| v.                                | ) |                           |
|                                   | ) |                           |
| Liberty Mutual Insurance Company, | ) |                           |
|                                   | ) |                           |
| Defendant.                        | ) |                           |
|                                   | ) |                           |

This matter is before the Court on the Report and Recommendation (“R&R”) of the Magistrate Judge (Dkt. No. 105) recommending that the Court grant Defendant’s motion for summary judgment (Dkt. No 65). After a careful review of the record, the parties’ briefing, the R&R, and Plaintiff’s objections, (Dkt. No. 107), the Court declines to adopt the R&R as the order of the Court. The Court finds that material factual disputes exist which preclude granting Defendant’s motion. *See* Fed. R. Civ. P. 56. At the least, these questions include: (1) whether Plaintiff filed a claim with insurer in January 2020 or April 2021; (2) whether Plaintiff mailed letters to insurer regarding her claim in January 2020; (3) whether a failed hot water heater contributed in whole or in part to the damages for which Plaintiff seeks relief; and (4) what reasons insurer may have provided to Plaintiff for not undertaking the costs of repairs after Plaintiff allegedly filed her claim. As the R&R notes, however, Plaintiff has not named the correct defendant in this action as Defendant Liberty Mutual Insurance Company did not underwrite the policy at issue. The Court therefore remands this matter to the Magistrate Judge to permit Plaintiff, pursuant to Fed. R. Civ. P. 15(a), to amend her complaint to name the proper defendant in this matter. *See Watson v. Southern Ry. Co.*, 420 F. Supp. 483 (D.S.C. 1975), *aff’d without opinion*, 542 F.2d 1170 (4th Cir. 1976) (In a diversity action brought against a railroad to recover for

damage to plaintiff's packinghouse caused by a collision, plaintiff would be allowed to amend the complaint some two weeks after the railroad's summary-judgment motion had been lodged and a decision was imminent in order that plaintiff might not be denied "his day in court.")

**AND IT IS SO ORDERED.**

s/ Richard Mark Gergel  
United States District Judge

February 28, 2024  
Charleston, South Carolina